

February 1, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TWA325
Washington, DC 20554

CG Docket No. 02-278

Dear Secretary Dortch:

On behalf of the membership of Education Finance Council (EFC), I am writing to express EFC's support of the Petition for Reconsideration filed on December 16, 2016 by Great Lakes Higher Education Corp., Navient Corp., Nelnet Inc., Pennsylvania Higher Education Assistance Agency, and the Student Loan Servicing Alliance in the matter of Rules and Regulations Implementing the Telephone Consumer Protection Act.

EFC is the national trade association representing nonprofit and state-based education loan organizations. A number of EFC members, many of whom served as state-based and not-for-profit (NFP) lenders under the Federal Family Education Loan Program (FFELP), also contract with the federal government to service Federal Direct Loans. Some members also still service older FFELP loans. EFC members provide exemplary service to borrowers and the Education Department.

EFC agrees with the petitioners that the rules adopted by the FCC are contrary to congressional intent and are not supported by the plain language of the statute and the record in this proceeding. In addition, EFC believes that clarity is needed to ensure that this rule would apply to both federal contractors and subcontractors, and that it would encompass all federal student loans authorized under the Higher Education Act (HEA), including the William D. Ford Federal Direct Loan Program, the Federal Family Education Loan Program, and the Federal Perkins Loan Program.

Three-Call-Attempts-Per-Month Limit

The FCC's August 2016 Final Rule implementing Section 301 of the Bipartisan Budget Act of 2015 severely restricted Federal Direct Loan servicers' ability to use auto-dialing technology to contact borrowers by limiting them to three call attempts within a 30-day period. Most borrowers who default on their loans may never know of the myriad options available to them to manage their education loan debt, all because they never spoke with their student loan servicer. EFC supports the petitioners' proposal that "any reasonable limit should be based on the number of live contacts with borrowers and not merely call attempts."¹ These changes would increase servicers' ability to reach and counsel borrowers.

EFC further agrees with the petitioners that the three-call-attempt-per-30-days limit is "arbitrary and capricious ... lacks any rational basis ... and is not supported with empirical evidence from the

¹ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991: Petition for Reconsideration of Great Lakes Higher Education Corp.; Navient Corp.; Nelnet, Inc.; Pennsylvania Higher Education Assistance Agency; And The Student Loan Servicing Alliance (2016), available at: <https://ecfsapi.fcc.gov/file/1217190700960/Petition%20for%20Reconsideration.pdf>

record.”² EFC would like to reiterate evidence it previously submitted to the FCC that illustrates the importance of reconsidering the onerous restrictions placed on student loan servicers by the August 2016 final ruling.

In 2016, EFC conducted an informal poll of its members to determine the effectiveness of borrower live contact on reducing delinquencies. EFC members reported that, on average, delinquencies dropped by 79.83 percent after live contact with a borrower, with a range of the findings falling between 63.08 percent and 98 percent. One member reported that, on average, delinquencies were resolved eight calendar days after the first contact during the delinquency episode. The median time to resolution for those contacted was two calendar days; 80 percent were resolved within 10 calendar days; and 92 percent within 30 calendar days. Of the members that responded, several noted that they did not contact borrowers by cell phone or text message due to the risk and consequence of a potential accidental TCPA violation. In reporting their data, several respondents did not distinguish between landline and cell phone contact.

The findings of this informal survey overwhelmingly bolster EFC’s claim that, in a majority of cases, if a borrower can be contacted, that borrower can be helped. Our survey further supports the assertion that communicating with borrowers via cell phone calls and text messages leads to a greater reduction of delinquencies. According to a recent study from the Centers of Disease Control and Prevention, more than two-thirds of adults aged 25–29 (71.3 percent) and aged 30–34 (67.8 percent) live in households with wireless telephones only.³ However, the existing risk of punitive penalties and frivolous class-action lawsuits has driven several student loan servicers to limit outbound calls to borrowers through landlines only — an increasingly antiquated means of contact which has been proven several times over to be ineffective at reaching today’s student loan borrower population.

Additionally, the Bureau of Fiscal Service (Fiscal) at the U.S. Department of the Treasury submitted for the record to the FCC its relevant and illuminating July 2016 report, “Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt.”⁴ The report details observations from an ongoing two-year pilot program launched in February 2015 by Fiscal and the Office of Federal Student Aid at the U.S. Department of Education (the Department).

The report’s findings support many of the points made to the FCC by EFC and others regarding this proceeding, including:

- Student loans are unlike any other type of federal debt and defaulted student loans are very difficult to resolve;
- Student loans are very complex, and, as such, adequately informing and explaining repayment options to borrowers necessitates live contact and longer call handling times; and
- Student loan borrowers are difficult to engage through paper mail and landline telephone calls.

² Ibid.

³ Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January – June 2015*, National Center for Health Statistics (December 1, 2015), <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201512.pdf>.

⁴ Bureau of the Fiscal Service, U.S. Department of the Treasury, “Report on Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt” (2016), available at: <https://www.treasury.gov/connect/blog/Documents/student-loan-pilot-report-july-2016.pdf>.

In addition, the FCC should have considered other federal regulations that govern the servicing of federal student loans when it was setting the call limit. The three-call-attempt-per-30-day limit is in direct conflict with the requirements of other federal agencies. As noted by the petitioners, the Department of Education “requires federal student loan servicers to place at least four calls in a 21-day period to certain income-driven repayment plan applicants, even if those borrowers are not yet delinquent. The Department also expects federal student loan servicers to immediately reach out to borrowers when any issues arise.”⁵ The Department also cautioned the FCC that the three-call-per-month limit “would not afford borrowers sufficient opportunity to be presented with options to establish more reasonable payment amounts and avoid default, especially given that the proposal limits the number of initiated calls, even if the calls go unanswered.”⁶

The FCC suggests that servicers can manually call borrowers if they wish to attempt more than three calls per month. EFC agrees with the petitioners that manually dialing is extremely inefficient and that the use of modern telecommunications technology will enable servicers to reach significantly more borrowers in a more timely manner. EFC believes the petition provides strong evidence that supports this statement.

Calls to Reassigned and Wrong Numbers Must Be Allowed

Calls to reassigned numbers must be allowed beyond the one-call exemption. As Commissioner O’Rielly explained in his dissent, the final ruling’s “outright prohibition on misdialed calls and calls to entities other than the borrower, as well as the effective ban on calls to reassigned numbers, do not balance the benefits and concerns as the revised order claims. They run counter to the law.”⁷

Calls placed to a number provided by the borrower are calls for which the servicer has prior express consent, therefore, the caller would not need an exemption. With 100,000 wireless numbers being reassigned each day,⁸ it is impossible for servicers to determine with any accuracy when a number has been reassigned. If a call placed by a servicer is unanswered, there is no reason for the caller to believe they have reached a reassigned or wrong number. There is also no reliable database that servicers could use to verify the accuracy of a borrower’s wireless number, nor one that would include wireless numbers that are part of a business or family plan where the named subscriber associated with the number is different than the borrower. In short, the FCC’s overly proscriptive one-call exemption has no rational basis since servicers have absolutely no incentive to waste their time and resources calling wrong or reassigned numbers, and have no way of reliably knowing which numbers are reassigned or wrongly dialed.

EFC appreciates the importance of weighing student loan servicers’ fiduciary duty to collect debts owed to the United States and borrowers’ consumer rights. However, the FCC’s proposal creates an unhealthy balance which ultimately harms the student borrowers it seeks to protect. By severely limiting student loan servicers’ ability to make live contact with borrowers before and after delinquency, the FCC is ignoring all evidence provided by the industry and other federal regulatory agencies that shows that borrowers are helped and delinquencies are reduced when a servicer is able to speak to the borrower.

⁵ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991: Petition for Reconsideration of Great Lakes Higher Education Corp.; Navient Corp.; Nelnet, Inc.; Pennsylvania Higher Education Assistance Agency; And The Student Loan Servicing Alliance (2016), available at: <https://ecfsapi.fcc.gov/file/1217190700960/Petition%20for%20Reconsideration.pdf>

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

Therefore, EFC strongly supports the aforementioned Petition for Reconsideration and encourages the FCC to reconsider its ruling, especially in the case of the federal government's \$1.3 trillion student loan portfolio, which comprises a significant portion of the total debt owed to the United States.⁹

Sincerely,

A handwritten signature in black ink that reads "Debra J. Chromy". The signature is written in a cursive, flowing style.

Debra J. Chromy, Ed.D.
President

⁹ Ibid.